

HOUSE BILL No. 1131

DIGEST OF INTRODUCED BILL

Citations Affected: IC 6-2.5; IC 6-6; IC 6-8.1-1-1; IC 8-14-2-2.1.

Synopsis: Supplemental motor fuel tax. Imposes a supplemental motor fuel tax on the use of gasoline and special fuel in Indiana as long as the base motor fuel price (defined as the total price of the fuel minus state and federal taxes) is under \$3.50. Provides that the supplemental motor fuel tax decreases from 10 cents to zero as the base motor fuel price increases. Requires the department of state revenue to deposit revenue from the supplemental motor fuel tax in the highway, road and street fund.

Effective: July 1, 2016.

Smith M

January 7, 2016, read first time and referred to Committee on Roads and Transportation.



Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1131

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 6-2.5-3.5-12, AS ADDED BY P.L.227-2013,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2016]: Sec. 12. As used in this chapter, "total price per unit"
4 means the price per unit at which gasoline is actually sold, including
5 the gasoline use tax, Indiana gasoline tax, **supplemental motor fuel**
6 **tax**, and federal gasoline tax that are part of the sales price.
7 SECTION 2. IC 6-2.5-3.5-15, AS ADDED BY P.L.227-2013,
8 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 2016]: Sec. 15. (a) Before the twenty-second day of each
10 month, the department shall determine and provide a notice of the
11 gasoline use tax rate to be used during the following month and the
12 source of the data used to determine the gasoline use tax rate and the
13 statewide average retail price per gallon of gasoline. The notice shall
14 be published on the department's Internet web site in a departmental
15 notice.
16 (b) In determining the gasoline use tax rate under this section, the
17 department shall use:



(1) the statewide average retail price per gallon of gasoline (based on the retail price per gallon of gasoline from the sixteenth day of the previous month to the fifteenth day of the current month), excluding the Indiana gasoline tax, federal gasoline tax, the Indiana gasoline use tax, **the supplemental motor fuel tax**, and Indiana gross retail tax (if any); multiplied by
(2) seven percent (7%).

To determine the statewide average retail price, the department shall use a data service that updates the most recent retail price of gasoline. The gasoline use tax rate per gallon of gasoline determined by the department under this section shall be rounded to the nearest one-tenth of one cent (\$0.001).

SECTION 3. IC 6-2.5-4-1, AS AMENDED BY P.L.227-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. (a) A person is a retail merchant making a retail transaction when the person engages in selling at retail.

(b) A person is engaged in selling at retail when, in the ordinary course of the person's regularly conducted trade or business, the person:

- (1) acquires tangible personal property for the purpose of resale; and
- (2) transfers that property to another person for consideration.

(c) For purposes of determining what constitutes selling at retail, it does not matter whether:

- (1) the property is transferred in the same form as when it was acquired;
- (2) the property is transferred alone or in conjunction with other property or services; or
- (3) the property is transferred conditionally or otherwise.

(d) Notwithstanding subsection (b), a person is not selling at retail if the person is making a wholesale sale as described in section 2 of this chapter. However, in the case of sales of gasoline (as defined in IC 6-6-1.1-103), a person shall collect the gasoline use tax as provided in IC 6-2.5-3.5.

(e) The gross retail income received from selling at retail is only taxable under this article to the extent that the income represents:

- (1) the price of the property transferred, without the rendition of any service; and
- (2) except as provided in subsection (g), any bona fide charges which are made for preparation, fabrication, alteration, modification, finishing, completion, delivery, or other service performed in respect to the property transferred before its transfer



and which are separately stated on the transferor's records.
 For purposes of this subsection, a transfer is considered to have occurred after delivery of the property to the purchaser.

(f) Notwithstanding subsection (e):

(1) in the case of retail sales of special fuel (as defined in IC 6-6-2.5-22), the gross retail income received from selling at retail is the total sales price of the special fuel minus the part of that price attributable to tax imposed under IC 6-6-2.5, **IC 6-6-15**, or Section 4041(a) or Section 4081 of the Internal Revenue Code; and

(2) in the case of retail sales of cigarettes (as defined in IC 6-7-1-2), the gross retail income received from selling at retail is the total sales price of the cigarettes including the tax imposed under IC 6-7-1.

(g) Gross retail income does not include income that represents charges for serving or delivering food and food ingredients furnished, prepared, or served for consumption at a location, or on equipment, provided by the retail merchant. However, the exclusion under this subsection only applies if the charges for the serving or delivery are stated separately from the price of the food and food ingredients when the purchaser pays the charges.

SECTION 4. IC 6-2.5-7-1, AS AMENDED BY P.L.227-2013, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. (a) The definitions in this section apply throughout this chapter.

(b) "Kerosene" has the same meaning as the definition contained in IC 16-44-2-2.

(c) "Special fuel" has the same meaning as the definition contained in IC 6-6-2.5-22.

(d) "Unit" means the unit of measure, such as a gallon or a liter, by which special fuel is sold.

(e) "Metered pump" means a stationary pump which is capable of metering the amount of special fuel dispensed from it and which is capable of simultaneously calculating and displaying the price of the special fuel dispensed.

(f) "Indiana special fuel tax" means the tax imposed under IC 6-6-2.5.

(g) "Federal special fuel tax" means the excise tax imposed under Section 4041 or Section 4081 of the Internal Revenue Code.

(h) "Price per unit before the addition of state and federal taxes" means an amount which equals the remainder of:

(1) the total price per unit; minus



(2) the state gross retail, Indiana special fuel, **supplemental motor fuel**, and federal special fuel taxes which are part of the total price per unit.

(i) "Total price per unit" means the price per unit at which special fuel is actually sold, including the state gross retail, Indiana special fuel, **supplemental motor fuel**, and federal special fuel taxes which are part of the sales price.

SECTION 5. IC 6-6-4.1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 6. (a) A carrier is entitled to a credit against the tax imposed under section 4 of this chapter if the carrier, or a lessor operating under the carrier's annual permit, has:

- (1) paid the tax imposed under IC 6-6-1.1, ~~or~~ IC 6-6-2.5, **or IC 6-6-15** on motor fuel purchased in Indiana;
- (2) consumed the motor fuel outside Indiana; and
- (3) paid a gasoline, special fuel, or road tax with respect to the fuel in one (1) or more other states or jurisdictions.

(b) The amount of credit for a quarter is equal to the tax paid under IC 6-6-1.1, ~~and~~ IC 6-6-2.5, **and IC 6-6-15** on motor fuel that:

- (1) was purchased in Indiana;
- (2) was consumed outside Indiana; and
- (3) with respect to which the carrier paid a gasoline, special fuel, or road tax to another state or jurisdiction.

(c) To qualify for the credit, the carrier shall submit any evidence required by the department of payment of the tax imposed under IC 6-6-1.1, ~~or~~ IC 6-6-2.5, **or IC 6-6-15**.

(d) A credit earned by a carrier in a particular quarter shall be applied against the carrier's tax liability under this chapter for that quarter before any credit carryover is applied against that liability under section 7 of this chapter.

SECTION 6. IC 6-6-4.1-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 7. (a) As used in this section, the credit of a carrier for any quarter is the amount by which the credit to which the carrier is entitled under section 6 of this chapter for that quarter exceeds the tax liability of the carrier under section 4 of this chapter for that quarter.

(b) The credit for any quarter shall be allowed as a credit against the tax for which the carrier would otherwise be liable in the quarter in which the credit accrued.

(c) A carrier is entitled to the refund of any credit not previously used to offset a tax liability or for any erroneously paid tax or penalty. To obtain the refund, the carrier shall submit to the department a



properly completed application in accordance with rules adopted by the department under IC 4-22-2. The application must be submitted within three (3) years after the end of:

- (1) the quarter in which the credit accrued; or
- (2) the calendar year that contains the taxable period in which the tax or penalty was erroneously paid.

Along with the application, the carrier shall submit any evidence required by the department and any reports required by the department under this chapter.

(d) The department shall pay interest on any part of a refund that is not made within ninety (90) days after the date on which all of the following have been completed:

- (1) The filing of:
 - (A) the properly completed application for refund; or
 - (B) the quarterly return on which a refund is claimed.
- (2) The submission of any evidence required by the department of payment of the tax imposed under IC 6-6-1.1, ~~or~~ IC 6-6-2.5, **or IC 6-6-15.**
- (3) The submission of reports required by the department under this chapter.
- (4) The furnishing of a surety bond, letter of credit, or cash deposit under section 8 of this chapter.

(e) The department shall pay interest at the rate established under IC 6-8.1-9 from the date of:

- (1) the refund application;
- (2) the due date of a timely filed quarterly return on which a refund is claimed; or
- (3) the filing date of a quarterly return on which a refund is claimed, if the quarterly refund is filed after the due date of the quarterly return;

to a date determined by the department that does not precede the date on which the refund is made by more than thirty (30) days.

SECTION 7. IC 6-6-15 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]:

Chapter 15. Supplemental Motor Fuel Tax

Sec. 1. This chapter applies to motor fuel purchased after June 30, 2016.

Sec. 2. As used in this chapter, "base motor fuel price" means the total sales price of the motor fuel sold at retail minus the part of that price attributable to a tax imposed under IC 6-6-1.1, IC 6-6-2.5, or Section 4041(a) or 4081 of the Internal Revenue



Code, without regard to the tax imposed under this chapter.

Sec. 3. As used in this chapter, "carrier" has the meaning set forth in IC 6-6-4.1-1(a).

Sec. 4. As used in this chapter, "department" refers to the department of state revenue.

Sec. 5. As used in this chapter, "diesel gallon equivalent" has the meaning set forth in IC 6-6-4.1-1(f).

Sec. 6. As used in this chapter, "gasoline gallon equivalent" has the meaning set forth in IC 6-6-4.1-1(g).

Sec. 7. As used in this chapter, "motor fuel" means either of the following:

(1) Gasoline (as defined in IC 6-6-1.1-103(g)).

(2) Special fuel (as defined in IC 6-6-2.5-22).

Sec. 8. Except as provided in section 9 of this chapter, a tax, known as the supplemental motor fuel tax, is imposed on each gallon, diesel gallon equivalent, or gasoline gallon equivalent of motor fuel consumed in Indiana.

Sec. 9. The amount of the supplemental motor fuel tax imposed under section 8 of this chapter upon the purchase of a gallon of motor fuel (other than a purchase of liquid natural gas or compressed natural gas), upon the diesel gallon equivalent of a purchase of liquid natural gas, or upon the gasoline gallon equivalent of a purchase of compressed natural gas is set forth in the following table:

Base Motor Fuel Price	Amount of Supplemental Motor Fuel Tax
Less than \$1.55	\$0.10
At least \$1.55, but less than \$2.00	\$0.07
At least \$2.00, but less than \$2.50	\$0.05
At least \$2.50, but less than \$3.00	\$0.03
At least \$3.00, but less than \$3.50	\$0.01
At least \$3.50	Zero

Sec. 10. Except as provided in section 11 of this chapter, the supplemental motor fuel tax imposed under this chapter must be imposed, paid, and collected in the same manner that the state gasoline and special fuel taxes are imposed, paid, and collected under this article. A purchase of motor fuel that is exempt from the gasoline tax or special fuel tax is exempt from the supplemental motor fuel tax. However, the return that is filed for the payment of the tax may be a separate return or may be combined with the return filed for the payment of the state gasoline tax or state special fuel tax as prescribed by the department.



1 **Sec. 11. (a) This section applies only to a carrier.**

2 **(b) The supplemental motor fuel tax imposed under this chapter**
 3 **upon a carrier shall be imposed, paid, and collected in the same**
 4 **manner as the state motor carrier fuel tax is imposed, paid, and**
 5 **collected under IC 6-6-4.1. However, the return that is filed for the**
 6 **payment of the tax may be a separate return or may be combined**
 7 **with the return filed for the payment of the state motor fuel tax as**
 8 **prescribed by the department.**

9 **Sec. 12. The supplemental motor fuel tax imposed under this**
 10 **chapter is a listed tax for purposes of IC 6-8.1-1.**

11 **Sec. 13. The department shall deposit the taxes collected under**
 12 **this chapter in the highway, road and street fund established under**
 13 **IC 8-14-2-2.1.**

14 SECTION 8. IC 6-8.1-1-1, AS AMENDED BY P.L.220-2014,
 15 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2016]: Sec. 1. "Listed taxes" or "taxes" includes only the
 17 pari-mutuel taxes (IC 4-31-9-3 through IC 4-31-9-5); the riverboat
 18 admissions tax (IC 4-33-12); the riverboat wagering tax (IC 4-33-13);
 19 the slot machine wagering tax (IC 4-35-8); the type II gambling game
 20 excise tax (IC 4-36-9); the gross income tax (IC 6-2.1) (repealed); the
 21 utility receipts and utility services use taxes (IC 6-2.3); the state gross
 22 retail and use taxes (IC 6-2.5); the adjusted gross income tax (IC 6-3);
 23 the supplemental net income tax (IC 6-3-8) (repealed); the county
 24 adjusted gross income tax (IC 6-3.5-1.1); the county option income tax
 25 (IC 6-3.5-6); the county economic development income tax
 26 (IC 6-3.5-7); the auto rental excise tax (IC 6-6-9); the financial
 27 institutions tax (IC 6-5.5); the gasoline tax (IC 6-6-1.1); the special fuel
 28 tax (IC 6-6-2.5); the motor carrier fuel tax (IC 6-6-4.1); a motor fuel tax
 29 collected under a reciprocal agreement under IC 6-8.1-3; the motor
 30 vehicle excise tax (IC 6-6-5); the aviation fuel excise tax (IC 6-6-13);
 31 the commercial vehicle excise tax (IC 6-6-5.5); the excise tax imposed
 32 on recreational vehicles and truck campers (IC 6-6-5.1); the hazardous
 33 waste disposal tax (IC 6-6-6.6) (repealed); **the supplemental motor**
 34 **fuel tax (IC 6-6-15);** the cigarette tax (IC 6-7-1); the beer excise tax
 35 (IC 7.1-4-2); the liquor excise tax (IC 7.1-4-3); the wine excise tax
 36 (IC 7.1-4-4); the hard cider excise tax (IC 7.1-4-4.5); the malt excise
 37 tax (IC 7.1-4-5); the petroleum severance tax (IC 6-8-1); the various
 38 innkeeper's taxes (IC 6-9); the various food and beverage taxes
 39 (IC 6-9); the county admissions tax (IC 6-9-13 and IC 6-9-28); the
 40 regional transportation improvement income tax (IC 8-24-17); the oil
 41 inspection fee (IC 16-44-2); ~~the emergency and hazardous chemical~~
 42 ~~inventory form fee (IC 6-6-10);~~ the penalties assessed for oversize



1 vehicles (IC 9-20-3 and IC 9-30); the fees and penalties assessed for
2 overweight vehicles (IC 9-20-4 and IC 9-30); and any other tax or fee
3 that the department is required to collect or administer.

4 SECTION 9. IC 8-14-2-2.1, AS AMENDED BY P.L.216-2014,
5 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
6 JULY 1, 2016]: Sec. 2.1. The auditor shall create a special fund to be
7 known as the "Highway, Road and Street Fund" for the deposit of the
8 revenues from:

9 (1) the gasoline and special fuel taxes dedicated to the fund under
10 IC 6-6-1.1-802 and IC 6-6-2.5; ~~and~~

11 (2) amounts deposited in or distributed to the fund under IC 9-29;
12 **and**

13 **(3) the supplemental motor fuel tax deposited in the fund**
14 **under IC 6-6-15-13.**

